LIBRARY

Supreme Court, U. S.
FILED
MAR 19 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No 74-1046

FREDERIKA BLANKNER,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN OPPOSITION ON BEHALF OF THE UNIVERSITY OF CHICAGO; JOHN T. WILSON, ACTING PRESIDENT; THE BOARD OF TRUSTEES OF THE UNIVERSITY OF CHICAGO; GAYLORD DONNELLY, CHAIRMAN; BEN W. HEINEMAN, FIRST VICE-CHAIRMAN; ROBERT P. GWINN, SECOND VICE-CHAIRMAN; AND WALTER V. LEEN, SECRETARY.

HERBERT MORTON,
WILLIAM R. DILLON,
111 West Washington Street,
Chicago, Illinois 60602,
Attorneys for Respondents, The University of Chicago, et al., as Above Captioned.

Gunthorp-Warren Printing Company, Chicago • 346-1717

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1046.

FREDERIKA BLANKNER,

Petitioner,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN OPPOSITION ON BEHALF OF THE UNIVERSITY OF CHICAGO; JOHN T. WILSON, ACTING PRESIDENT; THE BOARD OF TRUSTEES OF THE UNIVERSITY OF CHICAGO; GAYLORD DONNELLY, CHAIRMAN; BEN W. HEINEMAN, FIRST VICE-CHAIRMAN; ROBERT P. GWINN, SECOND VICE-CHAIRMAN; AND WALTER V. LEEN, SECRETARY.

QUESTION PRESENTED FOR REVIEW.

We respectfully submit that no legitimate question is presented for review by this Court. As will hereinafter appear, petitioner has previously sought certiorari from this Court to review essentially the same legal and constitutional points as

are now attempted to be raised. This Court denied certiorari, *Blankner* v. *City of Chicago,* 408 U. S. 931, 33 L. Ed. 2d 343, 92 S. Ct. 498 (1972), and further denied rehearing, *Blankner* v. *City of Chicago,* 409 U. S. 899, 34 L. Ed. 2d 159, 93 S. Ct. 181 (1972). No other or greater reason for granting review now exists.

STATEMENT OF THE CASE.

Petitioner's statement of the case does not adequately reveal the extensive nature of the underlying litigation.* Since we understand that the history of this litigation will be fully detailed in one or more briefs to be filed by other respondents in opposition to the petition for certiorari, we shall not indulge in unnecessary repetition.

However, we are impelled to note that the decision for which review is sought in this Court emanates from a controversy commencing with an eminent domain proceeding instituted in 1968 in the Circuit Court of Cook County, Illinois, from which petitioner has prosecuted two appeals to the Supreme Court of Illinois, two petitions for certiorari to the United States Supreme Court, a suit in the United States District Court for the Northern District of Illinois, Eastern Division, and an appeal to the United States Circuit Court of Appeals for the Seventh Circuit. Throughout the entire seven years of this litigation, petitioner has attempted to assert, under one format or another, essentially the same legal and constitutional issues. The decisions have all been adverse to petitioner, including the denial of certiorari by this Court on her former applications.

* The procedural background of the litigation is fully set forth in the City of Chicago's Response to Appellant's Motion for Injunction Pending Appeal, filed on August 2, 1973, in the United States Court of Appeals for the Seventh Circuit. Said Court denied the motion for injunction by order entered August 6, 1973.

REASON FOR DENYING THE WRIT.

Petitioner' Suit in the Federal Court Was Properly Dismissed as Being Barred by Prior Litigation of the Same Legal and Constitutional Issues.

Regardless of the label utilized—res judicata, collateral estoppel, prior issue determination, or waiver of federal forum—the decision of the Circuit Court of Appeals for the Seventh Circuit was correct in upholding the District Court's dismissal of petitioner's complaint for reasserting essentially the same contentions which were decided adversely to her in the State Courts, and with respect to which this Court previously denied certiorari.

The entire thrust of petitioner's argument throughout the long history of this litigation is that she was not afforded a hearing at the time of the legislative determination of slum and blight with respect to the area in which her property was located. She further contends that judicial confirmation of this legislative determination was predicated on a *prima facie* case being established by the condemning authority (City of Chicago) through the introduction in the eminent domain proceeding of evidence of the legislative determination, at which time the burden shifted to petitioner to disprove the condition of the area. This procedural process, according to petitioner, deprived her of constitutional guarantees of due process and equal protection.

On petitioner's appeal of the condemnation judgment to the Supreme Court of Illinois, she in essence raised and argued the same issues as indicated by the following portion of that Court's opinion in *City of Chicago* v. *Walker (Blankner)*, 50 Ill. 2d 69, 70-71 (1971):

> "As grounds for reversal defendant contends that the trial court erred in denying her traverse. She argues that

she was denied an opportunity to introduce evidence to prove that the area generally, and her property specifically, were not blighted. She contends further that the circuit court's ruling that proof of the resolution and ordinance declaring the area blighted and authorizing its acquisition made a *prima facie* case erroneously shifted to her the burden of proof that the area was not slum and blighted, thus denying her due process and equal protection rights guaranteed under the fourteenth amendment to the constitution of the United States.

"The record shows that at the hearing on the traverse and motion to dismiss, after the city rested its case, defendant argued that the city had not made out a *prima facie* case and elected to offer no evidence. The introduction into evidence of the resolution of the Department of Urban Renewal and the ordinance approving it made out a *prima facie* case (*City of Chicago* v. *Barnes*, 30 Ill. 2d 255; *Chicago Land Clearance Com.* v. *Quinn Home Builders*, 11 Ill. 2d 111), and the trial court did not err in denying the traverse and motion.

* * * * *

"We have considered the arguments of defendant and of *amici curiae* that acquisition of the defendant's property through condemnation for resale to the university denies to this defendant the equal protection of the law. We have previously held that the taking of land for the redevelopment of slum and blighted areas is a taking for a public purpose, and the fact that a portion will be resold for development for private purposes does not render the condemnation invalid. (*Chicago Land Clearance Com.* v. *White*, 411 Ill. 310) We do not discuss the remaining contentions of *amici curiae* for the reason that insofar as they are relevant to issues presented by the record they have been determined by our holding in *City of Chicago* v. *Zwick Co.*, 27 Ill. 2d 128."

From the affirmance of the trial court by the Supreme Court of Illinois, petitioner sought certiorari from the Supreme Court of the United States, which was denied. (*Blankner* v. *City of Chicago*, 408 U. S. 931, 33 L. Ed. 2d 343, 92 Sup. Ct. 498)

Petitioner then sought rehearing in this Court, which was likewise denied. (*Blankner* v. *City of Chicago*, 409 U. S. 899, 34 L. Ed. 2d 159, 93 Sup. Ct. 181) Petitioner's briefs in connection with this prior application for certiorari and rehearing are substantially identical to the present application for certiorari. Even a cursory examination of these earlier briefs will make it abundantly clear that the present litigation is merely a rehash of what petitioner has urged and argued before. For the convenience of this Court, we note that petitioner's prior briefs in this Court were filed under the following case numbers:

Petition for Writ of Certiorari—No. A-1026

Reply to Brief for Respondent City of Chicago in Opposition—No. 71-1549

Petition for Rehearing of Petition for Writ of Certiorari—No. 71-1549

In her appeal to the Supreme Court of Illinois from the condemnation judgment, petitioner urged and argued without reservation the same federal constitutional issues which are asserted in the federal suit below. The only difference is that petitioner now has framed her contentions under a somewhat different format—an alleged violation of the Civil Rights Act (42 U. S. C. § 1983). This difference is merely one of form and not of substance. Having litigated in the State Courts without reservation the issues relative to the alleged infringement or abridgment of her federal constitutional rights, petitioner may not relitigate those same issues in the Federal Courts. [*England* v. *Louisiana Medical Examiners*, 375 U. S. 411, 11 L. Ed. 2d 440, 84 S. Ct. 461 (1964)] Considerations of economy of judicial time and public policy interdicting repetitious litigation bar a rehearing of the same issues which are at the core of petitioner's suit below. [*Commissioner* v. *Sunnen*, 333 U. S. 591, 92 L. Ed. 898, 68 Sup. Ct. 715 (1948)]

CONCLUSION.

The more-than-seven-year history of this litigation amply testifies to the exhaustive prosecution of petitioner's legal contentions and the patient judicial consideration she has received. While it is altogether fitting that our system of jurisprudence scrupulously heed a claim of abridgment of constitutional guarantees, it is not appropriate to abuse the process by repetitious and protracted litigation which frustrates a valid public program of slum and blight clearance. Petitioner has had a fulsome day in court—and enough is enough.

We respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

HERBERT MORTON,
WILLIAM R. DILLON,
111 West Washington Street,
Chicago, Illinois 60602,
Attorneys for Respondents, The University of Chicago, et al., as Above Captioned.